

No. 12922

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United States  
Court of Appeals  
For the Ninth Circuit.

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WILLIAM C. McINDOE,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

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Transcript of Record

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Appeal from the United States District Court,  
for the District of Oregon.



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Court of Appeals  
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WILLIAM C. McINDOE,

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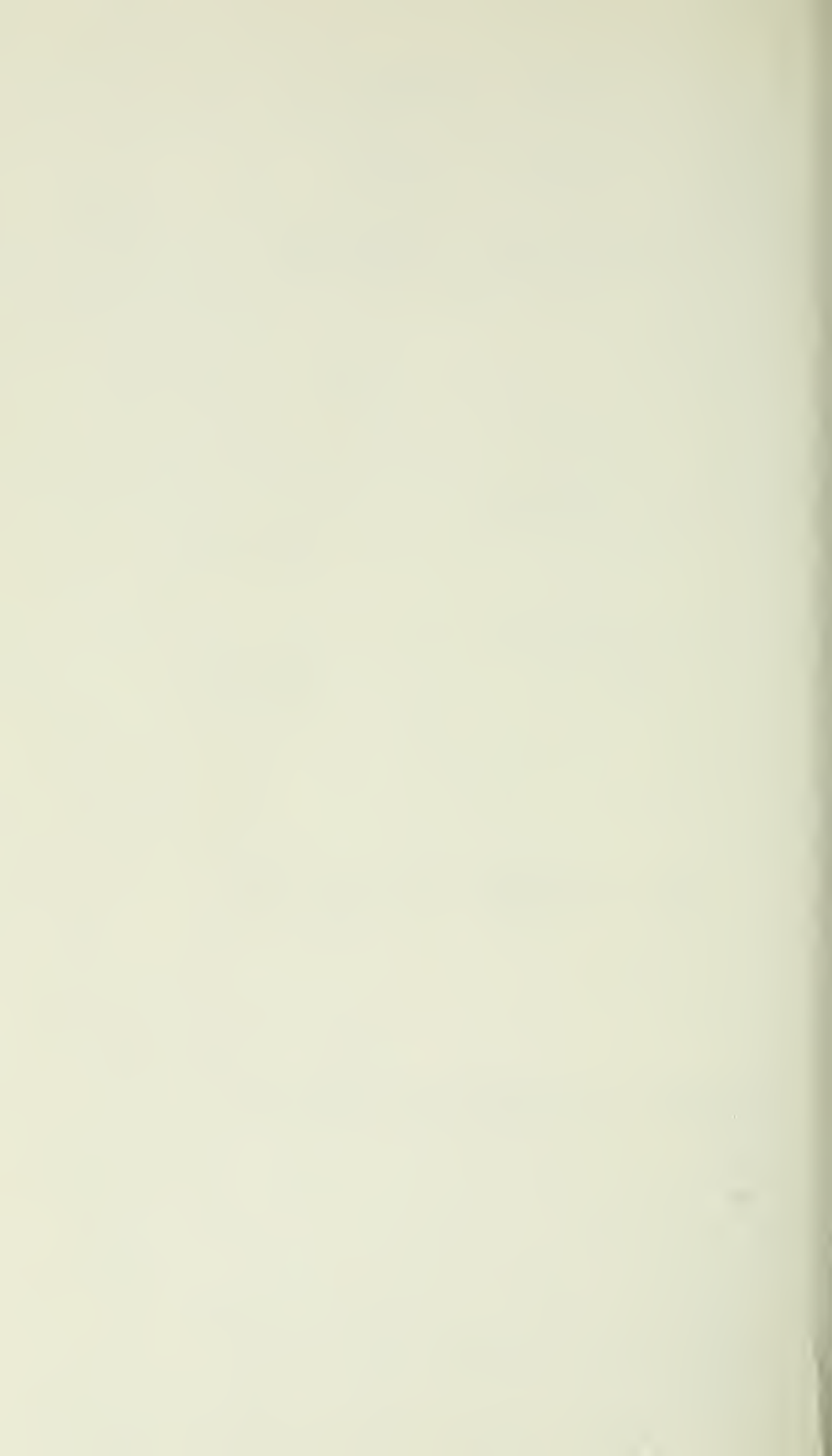
Appellee.

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Transcript of Record

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for the District of Oregon.



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Portland, Oregon,

Attorneys for Appellant.

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United States Attorney,

JOHN R. BROOKE, and  
DONALD W. McEWEN,

Assistant United States Attorneys,  
506 United States Courthouse,  
Portland, Oregon,

Attorneys for Appellee.





In the District Court of the United States  
For the District of Oregon

Civil No. 5698

WILLIAM C. McINDOE,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

PRE-TRIAL ORDER

Preliminary Statement

This is an action against the United States of America by the beneficiary of a National Service Life Insurance Policy upon which the Veterans Administration refused payment on the ground that premiums were not paid to the date of death. During his lifetime the insured wrote to the Veterans Administration and was advised that he had a credit on deposit equivalent to nearly four monthly premium payments and that said credit could be applied to the payment of future premiums. The insured thereafter paid no monthly premiums and within a few months was killed in a mountain climbing accident in Wyoming. Plaintiff, the insured's father, knew that the insured did not intend to abandon his policy although he had been late in one or two payments. On a claim for payment of the policy being presented, the Veterans Administration reneged on its letter of credit, claiming that the letter was in fact in error and that there was no credit whatsoever available and refused pay-

ment of the policy. The Government takes the position that, admitting that there would be an estoppel against a private insurance carrier sufficient to allow payment of the policy, no estoppel can be urged against the Government.

### Statement of Agreed Facts

1. That this Court has jurisdiction of this cause under Section 817, Title 38, U.S.C.A.; that plaintiff resides in Portland, Multnomah County, Oregon; that plaintiff's claim is an action for the payment of a policy of National Service Life Insurance; that said policy was executed and that a certificate in proof thereof was delivered, Number N 14769414, effective September 28, 1943, and was supported by valuable consideration; that the insured died August 24, 1947; that the defendant at all times acted by and through the Veterans Administration, its officers, agents, servants and employees.

2. That the policy named as primary beneficiary Mrs. Irena C. McIndoe, the insured's grandmother; that she deceased August 12, 1948; that plaintiff herein was named as secondary or contingent beneficiary and is the present beneficiary under said policy.

3. That on or about June 2, 1949, plaintiff submitted his claim in writing for the payment of the death benefits under the policy; that the defendant denied said claim on the ground of the non-payment of one monthly premium; that plaintiff duly and regularly appealed to the Board of Veterans Appeals, Washington, D. C., and that said

Board, on the same ground, denied said claim on January 12, 1950; that plaintiff has exhausted his administrative remedies.

4. That a disagreement exists between plaintiff and defendant; that said disagreement concerns only the payment of one monthly premium; that premium payments were made by allotment from the insured's service pay through May 28, 1946, following the insured's honorable discharge from active military service April 26, 1946; that defendant, by administrative action, waived the nonpayment of two monthly premiums, to wit: the months of November, 1946, and February, 1947; that other monthly payments were made by plaintiff and were received and credited by the defendant as follows:

| Premium<br>Due Date | Date of<br>Payment |
|---------------------|--------------------|
| 6-28-46 .....       | 5-18-46            |
| 7-28-46 .....       | 7- 3-46            |
| 8-28-46 .....       | 8- 1-46            |
| 9-28-46 .....       | 10- 9-46           |
| 10-28-46 .....      | 11-19-46           |
| 11-28-46 .....      | Waived             |
| 12-28-46 .....      | 1-17-47            |
| 1-28-47 .....       | 1-17-47            |
| 2-28-47 .....       | Waived             |
| 3-28-47 .....       | 4-11-47            |
| 4-28-47 .....       | 4-11-47            |
| 5-28-47 .....       | 5- 1-47            |

that a thirty-one day grace period existed, keeping the policy in force thirty-one days after the last premium payment.

5. That on or about May 13, 1947, the insured directed a letter, which was to the defendant, which the defendant received on or about that date, a true copy of which is hereto attached, marked "Exhibit A," and by reference thereto incorporated herein; that the defendant answered said letter by letter dated on or about May 29, 1947, a copy of which is hereto attached, marked "Exhibit B," and herein incorporated by reference thereto.

6. That the insured during his lifetime made no election as to the method of receiving benefits under said policy, and that the plaintiff herein has elected to receive payments in the shortest manner, to wit: thirty-six monthly payments from August, 1947.

7. That the plaintiff has retained James Cole and Bartlett F. Cole as his attorneys to represent him in this action.

### Issues To Be Determined

1. Did the insured during his lifetime accept, rely upon and act upon the defendant's statement of credit in the defendant's letter, which is Exhibit "B" herein, by himself discontinuing further cash monthly premium payments.

2. Is the defendant estopped by its letter, which is Exhibit "B" herein, to assert that one monthly premium payment has not been made.

### Question of Law

1. Will an estoppel lie against the United States, acting by and through the Veterans Administration, on a policy of National Service Life Insurance.

Exhibits

The following exhibits have been identified and their authenticity admitted. All questions as to their relevancy, materiality, competency and admissibility are reserved by each of the parties until trial.

1. Exhibit "A."

2. Exhibit "B."

(It is stipulated that the copies of the originals hereto attached may be used in lieu of said originals.)

3. Exhibit "C"—Bulletin.

4. Exhibit "D"—Application for reinstatement.

It is Hereby Ordered that the foregoing constitutes the Pre-trial Order in the above-entitled cause and the foregoing Order supersedes the pleadings and said Pre-Trial Order shall not be amended in the trial except by consent or by the Order of the Court to prevent manifest injustice.

Dated this 10th day of November, 1950.

/s/ GUS J. SOLOMON,

Judge.

The foregoing Pre-Trial Order has been prepared and assented to by us:

/s/ BARTLETT F. COLE,

Of Attorneys for Plaintiff.

/s/ JOHN R. BROOKE,

Assistant United States Attorney, of Attorneys for Defendant.



## Exhibit A

Veterans Administration  
Branch No. Eleven  
Exchange Bldg.  
Seattle, Washington

Gentlemen:

Inclosed is remittance in the amount of \$6.50 payment of the premium due for April on National Service N-14-769-414 on the life of William C. McIndoe, Jr., ASN 19201354.

As I was not able to make one or two payments on time I have gotten a few of my payments in late and now I am not sure for which month I am delinquent for. I would appreciate it very much if you would let me know just where I stand. Thank you.

/s/ WILLIAM C. McINDOE, JR.,  
Reed College,  
Portland 2, Ore.

## Exhibit B

Veterans Administration  
District Office No. 12  
San Francisco, California

May 29, 1947

Mr. William C. McIndoe, Jr.  
Reed College  
Portland 2, Oregon

Dear Mr. McIndoe:

Reference is made to your correspondence regarding National Service Life Insurance.

The records indicate that premiums on your insurance have been paid as shown in column (3) below. If no remittance was tendered for the premium due on July 28, 1946, or within 31 days thereafter, the insurance lapsed.

- (1) Certificate Number N 14 769 414.
- (2) Monthly Premium \$6.50.
- (3) Premiums Paid Through 7-27-1946.
- (4) Date of Lapse 7-28-1946.
- (5) Credit \$25.90.

Form 9-37, "Application for Reinstatement of National Service Life Insurance," is enclosed and should be completed in accordance with instructions thereon. The credit shown under Column (5) above may be used for the amount required for reinstatement and the excess may be applied to later premium payments.

The remittance enclosed in your recent letter when identified with your account will also be held as a credit to your account.

Very truly yours,

D. O. NELSON,  
Director, Insurance Service.

[Endorsed]: Filed November 10, 1950.

---

[Title of District Court and Cause.]

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled action came on for trial before the above-entitled court without a jury on the 10th

## Exhibit A

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Exchange Bldg.  
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Very truly yours,

D. O. NELSON,

Director, Insurance Service.

[Endorsed]: Filed November 10, 1950.

---

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW

The above-entitled action came on for trial before the above-entitled court without a jury on the 10th

day of November, 1950, plaintiff appearing by Bartlett Cole, his attorney, and defendant appearing by John R. Brooke, Assistant United States Attorney for the District of Oregon. At the conclusion of the trial briefs were submitted by each party through their respective attorneys on a legal point raised during the course of the trial. The Court having considered the evidence adduced at the trial and legal arguments raised in the briefs, and being fully advised in the premises, now makes the following

### Findings of Fact

#### I.

That plaintiff, William C. McIndoe, is the present beneficiary under a certain National Service Life Insurance policy issued on the life of his son, William C. McIndoe, Jr., which became effective September 28, 1943. This policy was in the amount of \$10,000.00 and was identified by Certificate Number N 14 769 414.

#### II.

That William C. McIndoe, Jr., died on August 24, 1947.

#### III.

That the last monthly premium payment made on this insurance policy occurred on May 1, 1947, this payment being the premium due for the period May 28, 1947, to June 27, 1947.

#### IV.

That the National Service Life Insurance policy

involved in this case provided for a thirty-one day grace period upon non-payment of premiums when due.

V.

That the above-described insurance policy was in effect (including the thirty-one day grace period) until July 29, 1947.

Based on the foregoing Findings of Fact, the Court makes the following

Conclusions of Law

I.

That this court has jurisdiction over the parties and the subject matter.

II.

That the insurance policy involved in this cause lapsed by reason of non-payment of monthly premiums when due prior to August 24, 1947, and was not in force and effect on that date.

III.

That defendant herein, United States of America, may not be estopped to raise the defense of non-payment of premiums on a National Service Life Insurance policy.

IV.

That plaintiff is not entitled to recover from the defendant in this action, and defendant is entitled to judgment.

Dated at Portland, Oregon, this 16th day of March, 1951.

/s/ GUS J. SOLOMON,  
District Judge.

[Endorsed]: Filed March 16, 1951.

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In the United States District Court  
For the District of Oregon  
Civil No. 5698

WILLIAM C. McINDOE,  
Plaintiff,  
vs.  
UNITED STATES OF AMERICA,  
Defendant.

### JUDGMENT

This matter having come on for trial before the Court without a jury on the 10th day of November, 1950, and the Court having entered its Findings of Fact and Conclusions of Law in favor of defendant, and the Court being fully advised in the premises, therefore, it is

Ordered, Adjudged and Decreed that plaintiff take nothing and that the above-entitled action be, and it is hereby dismissed on the merits.

Made and entered this 16th day of March, 1951.

/s/ GUS J. SOLOMON,  
District Judge.

[Endorsed]: Filed March 16, 1951.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To: United States of America, Defendant, and  
Henry L. Hess, United States Attorney; John  
R. Brooke, Deputy United States Attorney,  
District of Oregon, United States Court House,  
Portland 7, Oregon.

Notice is Hereby Given that William C. McIndoe,  
plaintiff above named, hereby appeals to The United  
States Court of Appeals for the Ninth Circuit from  
the final judgment that plaintiff take nothing in the  
above-entitled action and dismissing it on the merits,  
said judgment entered in this action on March 16,  
1951.

/s/ JAMES COLE,

/s/ BARTLETT F. COLE,

Attorneys for Plaintiff and Appellant William C.  
McIndoe.

Due and legal service of the foregoing Notice of  
Appeal is hereby accepted in Portland, Oregon, this  
7th day of May, 1951.

By /s/ JOHN R. BROOKE,

United States Attorney.

[Endorsed]: Filed May 7, 1951.

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD  
ON APPEAL

To: Lowell Mundorff, Clerk of the United States  
District Court, for the District of Oregon,  
United States Court House, Portland 7, Oregon.

Comes now Wiliam C. McIndoe, plaintiff and appellant above named, acting by and through his attorneys of record, and designates that the following be included in the record on appeal to The United States Court of Appeals for the Ninth Circuit:

1. Pre-Trial Order.
2. Findings of Fact and Conclusions of Law.
3. Judgment.
4. Official Court Reporter's Transcript of Court Proceedings, prepared and certified by Ira G. Holcomb, Official Court Reporter. This transcript includes the oral opinion rendered on February 17, 1951, by Gus J. Solomon, District Judge.
5. All of the Exhibits in the case:
  - (a) Letter from the insured to Veterans Administration;
  - (b) Letter from the Veterans Administration to insured, dated May 29, 1947;
  - (c) Veterans Administration Technical Bulletin;
  - (d) Veterans Administration Application for Reinstatement Form. Your attention is



called to the fact that plaintiff and defendant have stipulated in the Pre-Trial Order that copies of the first two might be used in lieu of the originals and that the copies were attached to the Pre-Trial Order.

6. Notice of Appeal.
7. Designation of Contents of Record on Appeal.
8. Transcript of Docket Entries.

Dated at Portland, Oregon, this 7th day of May, 1951.

/s/ JAMES COLE,

/s/ BARTLETT F. COLE,

Attorneys for Plaintiff and Appellant William C. McIndoe.

Due and legal service of the foregoing Designation of Contents of Record on Appeal is hereby accepted in Portland, Oregon, this 7th day of May, 1951.

By /s/ JOHN R. BROOKE,

United States Attorney.

[Endorsed]: Filed May 7, 1951.

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[Title of District Court and Cause.]

## TRANSCRIPT OF DOCKET ENTRIES

1950

July 20—Filed complaint.

July 20—Issued summons—to Marshal.

July 21—Filed summons with Marshal's return.

1950

- Aug. 21—Entered order setting for pre-trial conference on October 9, 1950, and assigning to J. McColloch.
- Sept. 5—Entered order assigning to Judge Solomon.
- Sept. 11—Entered order resetting for pre-trial conference Nov. 6, 1950, with trial to follow.
- Sept. 16—Filed stipulation that deft. have to and inc. Oct. 6, 1950, in which to appear.
- Sept. 18—Filed and entered order that deft. have to and inc. Oct. 6, 1950, in which to appear.
- Oct. 9—Filed answer.
- Nov. 6—Entered order setting for trial on Nov. 10 at 9:00 a.m.
- Nov. 10—Record of pre-trial conference.
- Nov. 10—Filed and entered pre-trial order.
- Nov. 10—Record of trial before court and order taking under advisement.

1951

- Feb. 13—Filed plaintiff's second brief of authorities.
- Feb. 17—Record of opinion and order for defendant to prepare and submit Findings of Fact, Conclusions of Law, and Judgment.
- Mar. 16—Filed and entered Findings of Fact and Conclusions of Law.
- Mar. 16—Filed and entered judgment for defendant.
- Mar. 20—Filed cost bill of defendant.
- Mar. 23—Filed praecipe of U. S. for certified copy of findings and judgment. Issued 3-23-51.
- May 7—Filed transcript of proceedings of Nov. 10, 1950, in duplicate.



1951

- May 7—Filed notice of appeal by plntf.  
May 7—Filed bond for costs on appeal.  
May 7—Filed designation of record on appeal.  
May 7—Mailed copy of notice of appeal to U. S.  
Atty., c/o John R. Brooke.
- 

United States District Court  
District of Oregon  
Civil No. 5698

WILLIAM C. McINDOE,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

November 10, 1950

Before: Honorable Gus J. Solomon,  
Judge.

Appearances:

MR. BARTLETT F. COLE,  
Attorney for Plaintiff.

MR. HENRY L. HESS,  
United States Attorney, by

MR. JOHN R. BROOKE,  
Assistant United States Attorney, and

MR. DONALD W. McEWEN,  
Assistant United States Attorney.

## TRANSCRIPT OF PROCEEDINGS

The Court: Have you agreed upon this pre-trial order that has been submitted?

Mr. Brooke: I believe the pre-trial order has been signed and agreed upon and presented to the Court, your Honor.

Mr. Cole: Your Honor, when this was brought up, there was a Technical Bulletin issued by the Veterans Administration which opposing counsel and myself studied, and we thought we might include it as one of the exhibits, and then when the pre-trial order was presented we decided we did not want to do that. I would rather like to have it included, your Honor. However, Counsel tells me that an officer of the Veterans Administration will be here, and perhaps his testimony will bring out the same facts.

Mr. Brooke: That is correct, your Honor. The bulletin is rather complex. I have examined it and Mr. Cole has examined it. Both of us have been of the opinion that, without some background in the matter, we would not be able to make a proper interpretation of it.

The Court: That would not make any difference if he wants to use it.

Mr. Brooke: If he desires to use it, that is all right, if the witness will clarify any misunderstandings that might be developed.

The Court: It may be marked as Exhibit C.

(Veterans Administration Technical Bulletin, TB9-53, was thereupon marked Plaintiff's Exhibit C.)

Mr. Cole: Thank you, your Honor.

Mr. Brooke: I would also like to add a certain document which was enclosed with a letter returned by the Veterans Administration to the insured in this particular case. That is the [2\*] application for reinstatement which was enclosed in the letter received by the insured in this case.

The Court: Have it marked Exhibit D.

(Blank form of application for Reinstatement (Non-Medical) was thereupon marked Defendant's Exhibit D.)

The Court: Is there any other change?

Mr. Brooke: That is all.

Mr. Cole: No, your Honor, that is all.

The Court: I am going to sign the pre-trial order. Call your witness Mr. Cole.

Mr. Cole: Your Honor, I have prepared a preliminary brief, if I might tender it at this time.

The Court: Yes.

Mr. Cole: The plaintiff will call Mr. McIndoe, the plaintiff himself.

### WILLIAM C. McINDOE

plaintiff, was thereupon produced as a witness in his own behalf and, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Cole:

Q. Mr. McIndoe, your address, please?

A. 119 Northwest 21st Avenue, Portland, Oregon. [3]

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\* Page numbering appearing at top of page of original Reporter's Transcript of Record.

(Testimony of William C. McIndoe.)

Q. Your occupation at this time?

A. Consulting industrial chemist.

Q. How old are you? A. Fifty-five.

Q. Are you the father of William C. McIndoe, Jr.? A. I am.

Q. Were you, yourself, a serviceman in World War I? A. Yes.

Q. And in World War II? A. Also.

Q. Did you keep up your Government insurance policy issued in World War I? A. I did.

Q. What was the general nature of your son's World War II service?

A. His service began in 1943 when he was called from Reed College into the service. He got some additional training at the University of Illinois and was transferred to the Corps of Engineers and went into battle with General Patton up in Germany with the 1265th Engineer Battalion as a Staff Sergeant in Company D, when he was only twenty years old.

Q. When did he die?

A. August 24, 1947.

Q. How old was he then?

A. Twenty-two.

Q. When was he discharged from the [4] service?

A. In April of 1946.

Q. In the fall of 1946 where was he living?

A. He came back in the fall to first live with me and then he went over to Reed College where he maintained a dormitory room, so as to be close to his work at the College.

(Testimony of William C. McIndoe.)

Q. Did he visit you on week ends?

A. Yes, and often during the week.

Q. And stayed overnight at your home sometimes on week ends?

A. That is right; that is not at that address at the time, however.

Q. At what address were you living then?

A. 3430 Southwest Scholls Ferry Road.

Q. Did these visitations occur during the following winter and the spring of the year, 1946 and 1947?

A. That is correct.

Q. At that time was the subject of the National Service Life Insurance discussed?

A. It was, on several occasions.

Q. Who was present besides yourself and your son?

A. My wife.

Q. What, if anything, was said by your son in respect to the continuation of the National Service Life?

Mr. Brooke: I object to that, your Honor, on the ground of hearsay and as not being properly admissible in this case. If anything was said by the plaintiff, undoubtedly it would be to [5] his interest rather than against his interest. I believe it is all inadmissible.

The Court: I am going to overrule the objection and listen to the evidence.

The Witness: Mr. Cole, repeat your question then.

Q. (By Mr. Cole): What, if anything, did your

(Testimony of William C. McIndoe.)

son say about continuing his National Service Life Insurance?

A. He was feeling very strongly about the limited amount of money that he had under the GI Bill of Rights and was finding it difficult.

In the discussions both my wife and I tried to tell him of the advantages of continuing the insurance, using my own particular case as an example as to how my own insurance had helped me from time to time, and with the help of a Terminal Leave bond he finally decided, yes, he could go on and continue his insurance.

Q. He was going to school under the GI Bill?

A. That is correct.

Q. Receiving certain payments going towards his board and room?

A. That is correct.

Q. Was he also receiving any other income from the Government?

A. He had a minor disability allowance which, I think, amounted to about \$15 a month, due to frostbite of his feet.

Q. Was there any delay in receiving those payments from the Government? [6]

A. Yes. Around October of 1946 the Veterans Administration discontinued his payments entirely until he could clarify his——

Mr. McEwen: I do not think that is competent, your Honor.

The Court: I doubt the competency of some of this evidence but, as I stated, in view of the fact there is no jury here, I will be able to sit it out.



(Testimony of William C. McIndoe.)

Mr. Brooke: Could the record show, your Honor, that statements made by the deceased to various witnesses go in over our objection?

The Court: Yes. This is all being admitted subject to the Government's objection.

Q. (By Mr. Cole): Did your son ever appeal to you for financial assistance in maintaining his National Service Life Insurance? A. Yes.

Q. On what occasion was this?

A. Around the period of October, and I furnished him money for his premiums.

Q. What was his monthly premium?

A. \$6.50.

Q. What items did he mention, if he mentioned any, as reasons for continuing his National Service Life Insurance?

A. The items mentioned were that, due to his allotment, he had quite a bit of money invested in the policy that he would lose if he dropped it.

Mr. Brooke: I didn't hear the first. [7]

A. My son said that he had quite a bit of money invested in the policy, due to his allotment, which he would lose if he dropped it, and in the course of these discussions I realized——

Q. (By Mr. Cole): What did he say? What did he say, for example, about the use of the insurance, if he said anything, as security for a loan?

A. Well, he said he was convinced that it had a value because he had seen it or knew of it having a value for me personally on my own insurance.

(Testimony of William C. McIndoe.)

Q. Did he discuss the advantages of conversion?

A. Yes, he did. He knew from the type of insurance that he started with that it could only run five years and then he had to convert it, so he was starting to think about what type of insurance he would convert to.

Q. It was term insurance that he had?

A. He only had term insurance; that is right. They all started that way. I started that way.

Q. What plan, if any, did he discuss as a plan that he intended to convert to?

A. We took the bulletin published by the National Service Life and studied every single plan and finally wound up with a decision—or he wound up with a decision to use the 30-Pay-Life, and to take his Terminal Leave bond to pay the difference.

Q. What did your son do in the spring of 1947, if anything, in the way of a vocation after leaving school? [8]

A. He put in an application for summer work, for a summer job, with the National Park Service, because a couple of his bosom pals at Reed were planning to do the same thing, and one in particular already had his job over there as a ranger established.

Q. Approximately when did he end his semester at Reed in 1947, in the spring?

A. I don't quite get your question.

Q. Do you know the approximate date that the spring semester closed at Reed in 1947?



(Testimony of William C. McIndoe.)

A. The first week in June.

Q. Did he leave for this Wyoming job directly from Portland?

A. No, he went south, first, to California.

Q. Did he leave as soon as school was out in the spring of 1947?

A. He stayed in Portland only long enough to close his bank account.

Q. Do you know the date on which he closed his bank account?

A. To the best of my recollection, it was June 6th, at the main branch of the First National Bank.

Q. Did you ever see him alive again after he left Portland?      A. Never.

Q. During the few days before he left for Wyoming did he discuss with you his National Service Life Insurance policy?

A. Yes, he did.

Q. Did he discuss with you, in particular, the payments for the ensuing summer, the monthly premium payments? [9]      A. Yes, he did.

Q. What, if anything, did he say in that connection?

Mr. Brooke: That is specifically objected to by the Government, your Honor.

The Court: Your objection may go to that, but he may answer the question.

Q. (By Mr. Cole): Go ahead and answer the question.

A. His statement was in reply to an offer of mine to take care of his premium payments while

(Testimony of William C. McIndoe.)

he was away in the summer months. He said that would not be necessary because he had a credit which would take care of them.

Q. Do you know when registration commenced in the fall of 1947 at Reed College? A. Yes.

Q. What date was that?

A. September 22, 1947.

Q. If it had not been for your son's untimely death, would he have come back to Reed, as far as you know? A. That is correct.

Q. Do you know whether, at the time of his death in Wyoming, he had any money on his person or not?

A. I know what was handed to me when I went over there for the funeral.

Q. Was there any cash money handed to you?

A. \$140. [10]

Q. Were you told that was on his person at the time of his death? A. That is correct.

Q. Did he give you any instructions as to the use of the Terminal Leave bond before he left?

Mr. Brooke: That is immaterial, your Honor.

The Court: Objection overruled.

A. He gave me instructions to keep custody of them until he could return in the fall.

Q. (By Mr. Cole): What plan did he express, if any, for the use of the Terminal Leave bond in the fall?

A. The plan that he stressed was to use that bond in the conversion of his insurance policy to pay the difference between his term insurance and

(Testimony of William C. McIndoe.)

the higher cost of the 30-Pay-Life to establish his initial low age for the final policy.

Mr. McEwen: Your Honor understands the Government has an objection to this line of inquiry. We would not want to reiterate the objection. I do not see that it serves any material purpose if the Court will reserve ruling.

The Court: Yes. When I say "objection overruled" that means taking it under advisement. I might say that goes to the whole line of questions. I have some doubt as to the admissibility of a great deal of this testimony, but I thought I would permit the witness to answer these questions and later on I will make a determination. [11]

Q. (By Mr. Cole): Mc. McIndoe, how did your son meet his death?

A. By a fall from the 11,000-foot level of Mt. Owen in the Grand Teton Mountains.

Q. This document which has been marked Exhibit B in the pre-trial order, did you ever see that personally?

A. I never saw the original that I know of.

Mr. Cole: I think that is all.

### Cross-Examination

By Mr. Brooke:

Q. I believe you testified, Mr. McIndoe, that your son closed his bank account on June 6 of 1947?

A. To the best of my belief, yes.

Q. Do you know if there was any reason for that? Did he tell you why?

(Testimony of William C. McIndoe.)

A. He said that he was extremely short of cash.

Q. Did he ever discuss his financial condition with you?

A. Yes, to a certain extent, but he was very proud; tried to get by on what he had.

Q. Did he tend to watch his money fairly closely?

A. I believe he turned in a very good account of the money in his possession.

Q. You understood the policy that your son had was a term insurance policy, did you not?

A. Yes, I did. [12]

Q. Didn't you also know that a term insurance policy does not build up any cash surrender value or loan value; that all it is is coverage or protection for a certain period if the payments are met?

A. That I didn't know.

Q. You didn't know that?

A. I didn't know that, no.

Q. Did you discuss with your son how he proposed to make these very increased payments on his converted plan of insurance if he had limited funds at the time he planned to convert?

A. Yes, we did discuss that and, so far as we were able to figure, that Terminal Leave bond would have paid in the difference and paid several additional premiums, and would have helped him to that extent.

Q. Did you discuss the difference in cost?

A. Yes. We had the tables right in front of us.

The Court: Are you waiving your original objection to this line of testimony?

(Testimony of William C. McIndoe.)

Mr. Brooke: No, I am not, your Honor.

The Court: You are cross-examining on it, though.

Mr. Brooke: If the Court decides to admit it, then, your Honor, I want to cross-examine. I want the cross-examination in the record, in that event.

Q. I did not get the value of this bond that you are talking about. [13]

A. The face value of it was \$225.

Q. \$225? A. That is correct.

Q. Do you recall what amount of money would be necessary to take this insurance back on a 30-day premium? A. No, I don't remember that.

Q. Do you have an approximate idea of how much more in premiums your son would have to pay per year on a 30-Pay-Life compared to this term insurance?

A. I am not sure of that, but I think it was about an additional \$4.00; that is about \$10 monthly premiums he would have to pay.

Q. What type of bank account did your son have? A. Checking; commercial checking.

Q. From your direct examination I understood that you talked over with your son the various steps he decided to take with his insurance. Did you discuss this credit with him to any appreciable extent?

A. I don't understand your question.

Q. Did you discuss the credit that your son told you about to any appreciable extent?



(Testimony of William C. McIndoe.)

A. No, because he left so shortly after he told us about that credit.

Mr. Brooke: That is all. No further questions.

Mr. Cole: That is all.

(Witness excused.) [14]

### MARTIN MURIE

was thereupon produced as a witness on behalf of Plaintiff and, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Cole:

Q. Your address at the present time, Mr. Murie?

A. Going to school in Berkeley, California; 2434 Piedmont Avenue.

Q. You are studying at the University of California? A. Yes.

Q. What are you studying? For what degree are you studying?

A. A Master's degree in history.

Q. Have you previously received a degree?

A. Yes, a B.A. degree in philosophy from Reed College.

Q. When did you receive that degree?

A. Last spring.

Q. Did you know William C. McIndoe, Jr., during his lifetime?

A. Yes, we were very good friends.

Q. For approximately what period of time did you know him? From what date?

(Testimony of Martin Murie.)

A. I first knew him in 1942 when I first entered Reed College. I knew him for a semester and then I think after the war we met again at Reed College in the fall of 1946, and we were close friends from that time until the time of his death.

Q. You were a serviceman yourself? [15]

A. Yes.

Q. With what unit did you serve during World War II?

The Court: I have let a lot of that stuff in, but I don't think it makes a great deal of difference.

Mr. Cole: Yes, your Honor.

Q. In June, 1947, where were you living, Mr. Murie?

A. Well, sometime in the early part of June I left Reed College and I went to my home in Moose, Wyoming.

Q. In what capacity were you employed at Moose?

A. I was working as a ranger for the Park Service.

Q. In what capacity was William C. McIndoe, Jr., employed there?

A. As a member of the trial crew for the Park Service.

Q. Did you and he live together? A. Yes.

Q. Where did you live?

A. We lived at my father's ranch.

Q. Did you share a cabin together?

A. Yes, three of us.

Q. By the three of you, who was the third one?

(Testimony of Martin Murie.)

A. Mark Woodbury, who also went to Reed College.

Q. Did the three of you bunk together?

A. Yes.

Q. This relationship continued throughout the latter part of June and July until the time of his death in August?

A. Yes. [16]

Q. During this period did you ever hear him discuss his National Service Life Insurance policy?

A. Yes, I did.

Q. What did he say in connection with it?

Mr. Brooke: The same objection, your Honor.

The Court: The objection will be understood as applying to all this testimony. It is admitted, subject to the objection.

Q. (By Mr. Cole): What did he say in connection with keeping it in force?

A. I can't remember anything specific. I can't repeat his exact words on that matter.

Q. Will you repeat the gist of his words?

A. Yes. To the best of my knowledge, he said that, due to the fact that he had a credit, he intended to continue holding his insurance in force.

Q. Was there any conversation between the three of you in respect to the advantages of continuing the insurance in force?

A. Yes. We discussed our insurance many times during the summer.

Q. How many times would you say you discussed it thoroughly between the three of you?

A. I would say that the number of conversations



(Testimony of Martin Murie.)

on that would be four or five, I think, during the course of the summer.

Q. Did William C. McIndoe, Jr., give any reason for keeping his National Service Life Insurance in force; that is, any [17] advantages for keeping it in force?

A. Yes. There was one reason on which we all three agreed, and that was that we had had these policies for quite a while and we didn't want to lose them; secondly, because we had heard about some plan for conversion—we were all having trouble with our insurance and we were rather confused about it. We wanted to try to hang onto our insurance until we could get it straightened out as to what advantages there were in this conversion plan.

Q. Was there any fourth party who discussed the conversion plan with you during the summer?

Mr. Brooke: That is immaterial, your Honor, and irrelevant. A fourth person? I didn't know that there was a fourth person there.

Mr. Cole: I believe that this matter of the intent of a deceased person is one of the most difficult things to get at.

The Court: I am going to allow a wide latitude here. You just go ahead and, after all the testimony is in, I might then feel that much of it is inadmissible, but I am going to let you make your case, so go ahead.

Q. (By Mr. Cole): Was there any person besides the three of you who ever joined in the con-

(Testimony of Martin Murie.)

versations relative to the National Service Life Insurance?

A. Well, there were several other people at various times. The only one I can recall specifically now is a girl in Wyoming who had been in the Waves and who told us about her plans for converting [18] her insurance, and she told us——

The Court: Was the deceased there with you at the time?

The Witness: Yes.

The Court: Where did this conversation take place?

The Witness: In a car. We were driving in a car.

The Court: Go ahead.

A. The result of this conversation I recall was that we all—we couldn't get all the straight dope from this Wave, so we decided the best thing we could do was to cut through all this red tape which we were involved in at the time and try to find out about the conversion plan, and to convert our insurance as soon as we got it straightened out. There were four people there, and we all agreed on this conclusion.

Q. (By Mr. Cole): Did the deceased, Mr. McIndoe, in his conversation with you during this time, ever mention his Terminal Leave bond?

A. I can't remember.

Q. Were the three of you living close together in respect to your eating, recreation and going to the post office and so on?

(Testimony of Martin Murie.)

A. Yes. We climbed mountains together on our days off, and we all had our breakfast at the ranch, and Mark and Bill had their noon meal at the Park Service headquarters.

Q. How far away was the post office from where you were living?

A. One mile from the ranch.

Q. What was the usual procedure in getting mail? [19]

A. Well, we got mail once a day from the post office. Whatever member of the family would be—whatever member of the family happened to be up there or coming home would stop and pick up the mail and bring the mail for all the people who were living on the ranch.

Q. Was it possible to purchase post office money orders at this post office at Moose, Wyoming, as far as you can recall?

A. Well, it is a small post office. I have never gotten any money orders there myself. I couldn't say.

Q. Do you know whether or not the deceased had money on his person at the time of his death?

Mr. Brooke: That has been established, your Honor, I believe.

The Court: Go ahead.

Q. (By Mr. Cole): Answer.

A. Yes, I found the money myself.

Q. Approximately how much was it?

A. I can't remember. I didn't count it.

Mr. Cole: You may examine.

(Testimony of Martin Murie.)

Cross-Examination

By Mr. Brooke:

Q. I believe as to the question as to whether the deceased intended to keep his insurance, your answer was likewise that, due to the fact that he had a credit, he intended to keep his insurance in force. Do you mean to indicate that if he did not [20] have this credit he was going to drop his insurance?

A. No, I didn't mean to indicate it.

Mr. Brooke: No other questions.

The Court: None of the boys over there were very flush with money, were they?

A. Well, I had a pretty good job. I was the only one——

Q. Did Woodbury have quite a bit of money?

A. No, not very much.

Q. What was the discussion on whether it would be wise for fellows of limited means, who were going to school, to continue to save this insurance when they might use the money for other purposes that they needed very badly? Did you discuss that?

A. Well, we figured it was worth while, even though we did have to scrape to do it.

Q. Was there a doubt in young McIndoe's mind as to whether or not it would be advisable to continue or not continue?

A. No, I don't recall any doubt in his mind about continuing it. It was mostly the status of just what kind of policy he would have and just where he stood with the VA that he was in doubt about.

(Testimony of Martin Murie.)

Q. Didn't he tell you he had already determined to convert it to a 30-Pay-Life policy? A. No.

Q. He never told you that?

A. No. As I say, we discussed this with the ex-Wave. That is [21] the first time I can recall this coming up because it was new to me. I didn't know about this opportunity.

Q. Opportunity to do what?

A. To convert.

Q. Did young McIndoe tell you he was not making the payments because he had a credit coming?

A. Yes, he said he had a credit which he thought would carry for several months ahead and figured he was paid up several months ahead.

The Court: That is all.

Mr. Cole: That is all.

(Witness excused.) [22]

### MRS. ELIZABETH McINDOE

was thereupon produced as a witness on behalf of Plaintiff and, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Cole:

Q. Will you state your name?

A. Mrs. Elizabeth McIndoe.

Q. Where do you live? What is your address?

A. 119 Northwest 21st Avenue.

Q. Your occupation?



(Testimony of Mrs. Elizabeth McIndoe.)

A. Housewife and mother.

Q. Were you in World War II?

A. Yes, I was.

Q. In what capacity? A. A WAC.

Q. Do you have now a National Service Life Insurance policy?

A. I do at the present time, yes.

Q. Did you live on Southwest Scholls Ferry Road in the fall and winter of 1946 and the spring of 1947? A. Yes, we did.

Q. Did the decedent, William C. McIndoe, Jr., call at your home on occasions?

A. Yes. I remember—I probably saw more of him than his father did.

Q. Incidentally, he was your stepson?

A. Yes. [23]

Q. On week ends would he stay at your house and some evenings?

A. When he didn't go up to the mountains, he always came by.

Q. Did you have any conversations concerning his National Service Life Insurance?

A. During that whole year whenever we saw him?

Q. Yes. A. Yes.

Q. Were you and Mr. McIndoe present with him on those occasions? A. Yes.

Q. What did he say, if anything, in regard to continuing his National Service Life Insurance?

Mr. McEwen: That subject, your Honor, has been gone into heretofore in the testimony already

(Testimony of Mrs. Elizabeth McIndoe.)

given. I don't see where any further purpose would be served to establish by another witness that this man said that he intended to keep his insurance.

The Court: You are objecting to it on that ground, also?

Mr. McEwen: On the ground that it is hearsay and self-serving.

The Court: What is this witness going to testify to? The same thing?

Mr. Cole: Substantially the same thing, your Honor. I think this witness is able to place a little bit better meaning on the conversation relative to the credit.

The Court: All right. Go ahead. Let her proceed. All this will be admitted, subject to the objection. [24]

Mr. Cole: Yes, your Honor.

The Court: Mr. Brooke and Mr. McEwen, you won't have to object any more. The testimony is received subject to your objection.

Q. (By Mr. Cole): Mrs. McIndoe, what was said in connection with the advantages of maintaining this National Service Life Insurance policy in force? A. What were the advantages?

Q. What were the advantages that young Bill spoke about?

A. Well, on several occasions he was quite serious about getting married. When I say "several occasions," it was the same girl, but it blew hot and cold, and he realized it would be an invaluable security for his own family if he did marry and had



(Testimony of Mrs. Elizabeth McIndoe.)

something that he could probably keep in force as it was, whereas he could not afford to take out a civilian policy of the same type.

Q. Was there anything said about the loss in view of dropping the policy?

A. Yes. He felt he had invested quite a bit in it and that it was like savings. I mean, that is why he kept it.

Q. Was anything said about the advantages of conversion?

A. I think the main thing was that, due to the fact that he had had the policy in force since an earlier date, that of course made a lower premium rate.

Q. Do you know whether he left a Terminal Leave bond with his [25] father when he went to Wyoming?

A. Yes, he gave it to both of us.

Q. Did you overhear a conversation between himself and his father relative to a credit on his National Service Life Insurance policy?

A. Well, I wouldn't say I overheard it. I was there at the time. I was more or less in on the conversation.

Q. There was no one else present besides yourself and your husband?

A. We have a small daughter.

Q. No one else present besides your daughter?

A. No.

Q. This conversation occurred in your home?

A. Yes, sir.

(Testimony of Mrs. Elizabeth McIndoe.)

Q. Do you recall the approximate date of this conversation?

A. Well, I think there were several conversations, because the discussion had gone on for some time, especially since he was trying to figure out——

Q. I mean the conversation in regard to the credit.

A. The credit?

Q. Yes.

A. That was when his father was talking to him about his finances, and for him to do anything that should be taken care of while he was away.

Q. On what approximate date did this conversation occur? [26]

A. Well, I would say around the first week in June. It was just before he left.

Q. Do you recall anything particularly that enables you to fix that as being the first week in June?

A. Well, only that his friends, Martin Murie and Mark Woodbury, were going to be up there—were going up there to Wyoming—I believe they had already gone or, rather, they were planning to leave ahead of the time Bill was to go, and he had kept in rather close communication with me because he was very anxious to get a letter confirming his appointment in the Park Service, and that was at the time he was taking his examinations and it was, I would say, around the 1st of June, and I did call him when the letter came to him and the boys—I think there were the three that I have mentioned and another boy—I don't know. They came out to my house and got the letter.

(Testimony of Mrs. Elizabeth McIndoe.)

Q. Notifying him that his job was awaiting him?

A. Confirming his job; and he left almost immediately afterwards.

Q. What did young Bill say, as far as you can remember, about his father's offer of financial assistance during the summer?

A. He said he didn't need any money and that he was closing his checking account. I think he had it mainly to pay his bills at school and things like that. He said that he would not need any money and that everything was taken care of.

Q. In connection with the National Service Life Insurance?

A. That he had not taken care of until he got back to school. [27]

Q. Do you know the approximate date that school reconvened in the fall?

A. Yes, I know it was going to be sometime around the 18th of September, because that was our little girl's birthday and we had joked with Bill about his being back for her birthday.

Mr. Cole: You may examine.

#### Cross-Examination

By Mr. Brooke:

Q. When did you take out your National Service Life policy?      A. I beg your pardon?

Q. When did you take out your National Life policy?

A. I didn't take it out until after I got out of the service and saw a notice that handicapped vet-

(Testimony of Mrs. Elizabeth McIndoe.)

erans could still get insurance. I didn't feel I could afford it when I was in the service, because I had a civilian policy and I only got \$27.00 a month and it was all I could do to pay my civilian policy.

Q. When was that? When did you take out your policy?

A. I think it was about a year ago. It was when it was happening to handicapped veterans who had not yet had policies.

Q. You stated here how young Bill McIndoe had kept his financial affairs. Did he take care of those things by himself, or did he discuss them continuously with you and your husband?

A. No, he was very independent. He realized my husband supported his mother and grandmother and he knew we had all we could [28] handle, and Bill was very proud, independent. However, he knew if he needed money or if he needed any help we would gladly give it to him, and we had on several occasions without his even asking for it.

Q. Generally, did he take care of his affairs with expedition and in good order?

A. Yes, I think he was very meticulous about that.

Mr. Brooke: I believe that is all the questions I have.

Mr. Cole: That is all.

(Witness excused.)

The Court: Are you going to have another witness?

Mr. Cole: No, your Honor.

The Court: There is a young man back here who seems to want to testify.

Mr. Cole: Yes, your Honor. We will call Mr. Woodbury. [29]

### MARK L. WOODBURY

was thereupon produced as a witness on behalf of Plaintiff and, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Cole:

Q. Your name is Mark L. Woodbury?

A. Yes.

Q. Your address?

A. 1414 Southeast Lambert Street.

Q. Your occupation at this time?

A. Student.

Q. Are you also a part-time lecturer?

A. No, I am not.

Q. Is your father? A. My father is.

Q. Some few weeks ago were you out of the city?

A. Yes.

Q. This last summer, I mean?

A. Yes, I was.

Q. Did you know William C. McIndoe, Jr., during his lifetime? A. I did.

Q. Where did you know him?

A. At Reed College and at Moose, Wyoming, while I worked with the Park Service with him.



(Testimony of Mark L. Woodbury.)

Q. What sort of work did you do for the Park Service? [30]

A. I was a laborer. We worked on roads and also on trails.

Q. Did you live together with Mr. Murie and Mr. McIndoe?           A. Yes, sir; I did.

Q. You bunked together in the same cabin?

A. Yes.

Q. This condition continued, did it, from the early part of June until August when Mr. McIndoe met his death?           A. Yes, it did.

Q. During this interval did you hear him discuss his National Service Life Insurance?

A. Yes.

Q. In connection with his policy, were the advantages of maintaining it discussed?

A. Yes, we discussed it.

Q. What did he say?

A. That his insurance, I guess, had lapsed and we talked about it with him. There had been a good deal of irritation that we all felt towards the Veterans Administration in this regard because of the difficulty—we were faced with the same result when we wrote to them. He was trying to get his insurance reinstated and there were a great deal of letters coming back and forth all summer.

Q. Did he ever show you any of the letters?

A. Not that I remember. He may have. I am not sure.

Q. Did he ever discuss the credit with the Vet-



(Testimony of Mark L. Woodbury.)

erans Administration [31] that he had on his policy?

A. I don't know. I vaguely remember—I really couldn't say.

Q. Were you here when Mr. Murie was being questioned by me? A. No, I was not.

Q. Do you recall a Wave or an ex-Wave, rather, discussing with you the advantages of the National Service Life Insurance during the time you were in Moose? A. A Wave?

Q. An ex-Wave?

A. No, I do not. As to the value of the National Service Life Insurance?

Q. Do you recall a conversation where there was a girl who had been in the Waves who talked with yourself and Mr. McIndoe and Mr. Murie something about the National Service Life Insurance and the possibility of converting?

The Court: I would not go any further with him now on that point. That is enough of a lead. He either had a conversation or he did not.

Mr. Cole: I was trying to refresh his memory.

The Court: I think you have gone far enough to refresh his memory.

The Witness: I am sorry. I don't remember.

Q. (By Mr. Cole): Did the three of you intend to return to Reed College in September, 1947?

A. Yes, we did. [32]

Q. Did the three of you discuss your plans for getting this confusion straightened out, in 1947, in the fall?

(Testimony of Mark L. Woodbury.)

A. We did, but we didn't—I don't know as we decided when we were going to do it. My insurance had lapsed I think at the time, too, and when I got back to Portland I did straighten it out.

I went to the Veterans Administration and straightened it out, and all three of us tried to do this all summer. The reason it is so confusing in my mind is because there were three—all our three insurances were in different states of lapse—well, at least Bill's and mine were in different states of lapse, and reinstatement and so forth, because of the letters, and somehow there seemed to be confusion.

Q. Do you have your policy in effect now?

A. No, I don't, but that——

Q. That is another story?                   A. Yes.

Q. You did get it into effect in the fall of 1947?

A. Yes, I believe so.

Q. During the summer of 1947 what expression, if any, did Mr. William C. McIndoe, Jr., make about getting the policy in order and keeping it in order?           A. He intended to reinstate it.

Q. I see.

A. And he was always in that frame of mind that he was going to reinstate it, apparently, as soon as he could. He was carrying [33] on correspondence with them and he was quite upset about it a good deal of the time.

Q. Did you see any of the letters that he wrote to the Veterans Administration concerning it?

A. Not that I remember. I may have.

(Testimony of Mark L. Woodbury.)

Q. Did you ever see any of the letters that he received from the Veterans Administration?

A. I don't remember of them, no. I remember of him getting them, but I don't remember their contents.

Q. Mr. Woodbury, when you use the term "re-instatement," is that the same term that Mr. McIndoe used? Are you quoting him *varbatim*, or is that just the general impression that you got from the tone of his conversations with you?

A. No, I am not. He said he was going to reinstate it. I don't know whether he used that term or not.

Q. I see. Let me ask you this: Was the gist of his conversation——

Mr. Brooke: He has stated the conversation.

The Court: Yes.

Mr. Brooke: He has testified as to what he knows the deceased to have said.

The Court: I am going to allow him to go ahead. All we are trying to find out is what the facts are. I have a few questions in mind myself. If you want me to, I will ask them now.

Mr. Cole: Go ahead, your Honor. [34]

The Court: Did young Bill McIndoe talk to you about the possibility of converting this policy?

A. Yes, I believe he did, in the early part of the summer.

Q. How well did you know Bill McIndoe?

A. I knew him very well.

(Testimony of Mark L. Woodbury.)

Q. Were you in the same class with him at Reed?  
A. No, I was not.

Q. Did you go to Reed?

A. Yes. I knew him very well at Reed.

Q. Did you fraternize with him there and with young Martin Murie?  
A. Yes.

Q. Did you, from time to time, go over to the McIndoe house?

A. Yes. We went over there before school was out or just after school was out.

Q. Did you live on the campus?  
A. Yes.

Q. Where did Bill live with reference to you?

A. He lived off the campus, but he was in our room a good deal of the time.

Q. Did he discuss this National Service Life Insurance with you from time to time before he left?

A. Not that I remember. He may have, because it was a very common topic of conversation. The conversation, as I remember, was during the summer, when we had more time to deal with that particular [35] thing.

Q. But during the latter part of May and June you do not recall any other conversation with reference to the National Service Life Insurance?

A. No, I don't.

Q. You were pretty busy with examinations and other things?

A. Yes, I was. There may have been conversations and I might be able to recall them, but I can't at this moment.

(Testimony of Mark L. Woodbury.)

Q. When you were in Wyoming, you did discuss the National Service Life with Martin Murie and Bill McIndoe on several occasions?

A. Yes, we did.

Q. What was the condition of the finances of Bill McIndoe when he went up to Wyoming?

A. Well, let me see. He was buying an automobile from his grandmother.

Q. Was he in pretty good financial shape, or did he have difficulty?

A. He was making money. When he was killed, he had money, quite a bit of money. He saved a great deal of money.

Q. But when he finished school, at the end of the school year, did he have very much?

A. I don't know. I wouldn't know. I could only guess. For myself, I didn't have much.

Q. When he discussed the question of reinstatement of the policy with you, did he mention the reasons why he had let the policy [36] lapse?

A. No, he didn't. I think he may have—I don't know.

Q. But he did not mention it to you, or at least you do not remember about any conversation as to the reason why he failed to make the payments?

A. No, I don't.

Q. Did he tell you he had determined to convert the policy to a 30-Pay-Life policy?

A. Martin talked about it—I remember one particular afternoon we talked about conversion.

Q. Conversion?



(Testimony of Mark L. Woodbury.)

A. Yes. I think Bill did say, yes, that he was going to convert. I don't know when.

Q. Did he ever tell you that there was any credit due on the policy that he had taken out, the National Service Life policy?

A. Credit due to him?

Q. Yes.

A. You asked that question before. Vaguely, I remember something about it.

Q. Did he tell you how he intended to reinstate the policy? A. No, not that I remember.

Q. Are you sure the impression was that it should involve reinstatement of the policy and not conversion of the policy?

A. Well, it was, so far as I remember, that he was going to reinstate it. He said so. [37]

Q. And once he reinstated he would convert?

A. Well, I don't know.

Q. There is no mistake about that?

A. No, there is no mistake about that.

Q. How many times did he talk about reinstatement of the policy? How many discussions did you have during the time you were up in Wyoming, bunking together? A. I have no idea.

Q. Was it more than once?

A. More than one; oh, certainly, more than one.

Q. Three or four times at least? A. Yes.

Q. And how many times do you recall he talked about the conversion of the policy?

A. The talk of the conversion was only once, although it may have been more. As I remember—I am very confused on this.



(Testimony of Mark L. Woodbury.)

Q. You may be confused about many things.

A. I am not confused about what Bill intended—but what Bill intended to reinstate his insurance. I am confused on certain of the various—I am confused on the date that he got letters.

Q. He never showed you the letters that he had received from the Veterans Administration?

A. He may have shown them to me, but I don't remember.

Q. Did he indicate that he was confused by means of the communications which he had received from the Veterans Administration? [38]

A. Yes, he did.

Q. Because he did not know what they meant?

A. Well, he had different ideas about them, but he didn't state—there were some things they did that he did not understand.

Q. And you had the same experience?

A. Yes.

Q. And so did Murie?                      A. Yes.

Q. In other words, all three of you had talked about the inability of the Veterans Administration to make themselves clear?                      A. Yes.

Q. There was difficulty of understanding the regulations?

A. Yes. The big thing would be that you would send a letter and the letter would not be acknowledged or they would not know about it somehow, and they would ask for the same information again.

The Court: Do you want to ask any more questions?

(Testimony of Mark L. Woodbury.)

Mr. Cole: Yes, if I may, your Honor.

The Court: Proceed.

Q. (By Mr. Cole): Included in those discussions was there any discussion of any grace period, any mention of a grace period under the National Service Life Insurance policy?

A. Oh, yes, there was. I discussed it—I didn't know exactly [39] what it was.

Q. Do you know whether young Bill knew what it was from his statements?

A. He may have. I don't know. I think I remember him saying what it was, but I don't know. It has been some time and I am very vague about his. I am not very clear.

Q. Were the three of you clear on the point that there was a grace period? A. Yes.

Q. And that if the premium was paid within the grace period the policy would not lapse? Were you aware of that point?

A. Yes. It was 30 days, I believe, something like that.

Q. Do you know whether young Bill thought he could reinstate his policy within the 31-day grace period, or 30-day grace period, whichever it was, if he did it when he came back to school in September?

A. Well, I don't know whether that was within the grace period or not.

Q. I know you do not know, but do you know whether young William McIndoe thought in his mind, from anything that he said, that if he got the

(Testimony of Mark L. Woodbury.)

policy straightened up in the fall it would be within the 31-day grace period?

A. I don't remember. I don't know. I don't know whether he said anything like that or not. I have the impression that his insurance had lapsed longer than that, but I don't know. [40]

Q. Were there some other things involved in this, such as the particular office to which the premiums should be paid and what office had the records, and so forth? Were those also subjects of confusion?

A. Of the particular offices?

Q. The office where payments should be made?

A. I think it was the Portland office. There may possibly have been when Bill was in California, if he had lived there.

Q. Was there some confusion about which office was handling young Bill's policy?

The Court: I think that has been answered several times.

Mr. Cole: Let me ask one more question.

Q. Mr. Woodbury, when you use the term "reinstatement," do you use that to include the straightening out of these other items of confusion, including the payment of the policy up to date?

The Court: I am not going to permit him to answer that, because he has answered it two times. He knows what "reinstatement" means, this young man. I have given you a great deal of latitude here, Mr. Cole.

Mr. Cole: That is all I have.

(Testimony of Mark L. Woodbury.)

The Court: Is there any cross-examination?

Mr. Brooke: A few questions, your Honor. [41]

Cross-Examination

By Mr. Brooke:

Q. What year was Mr. McIndoe in Reed College?  
A. When I knew him?

Q. Just before he went to Wyoming?

A. '46 and '47.

Q. Was that his sophomore year?

A. It seems to me he had finished his junior, but I am not sure.

Q. Was young Bill McIndoe aware of the fact that his policy had lapsed?

A. I guess so, yes. I think so. You see, the confusion was so tremendous about whether it had lapsed and he would write back and forth, between him and the Veterans Administration. I don't remember when the insurance had lapsed or when he had paid his last insurance premium.

Q. Did he tell you when he intended to reinstate the policy?

A. I imagine just as soon as—you see, he was carrying on communications with the Veterans Administration to that end.

Q. Was he carrying on these communications while in Wyoming?  
A. Yes, he was.

Mr. Brooke: No further questions.

Mr. Cole: Nothing further.

The Court: We will recess until 2:00 o'clock.

(Testimony of Mark L. Woodbury.)

(Thereupon the Court recessed until 2:00 o'clock p.m.) [42]

(Court reconvened at 2:00 o'clock p.m., Friday, November 10, 1950, pursuant to adjournment.)

Mr. Cole: Your Honor, may I have permission to call the witness, Mr. Mark Woodbury, for a question or two? This will be some additional evidence which he has recalled during the recess.

The Court: All right.

Mr. Brooke: This is subject to the objection by the Government on the ground that the witness was given ample opportunity to testify about his knowledge previously.

The Court: I understand.

### MARK L. WOODBURY

was recalled as a witness on behalf of Plaintiff and, having previously been duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Cole:

Q. Mr. Woodbury, have you refreshed your memory by recalling certain events to your mind during this recess the Court has just had?

A. Yes, I have.

Q. Have you recalled something now which the decedent said in regard to the lapse of his policy?

A. Yes, I have. [43]



(Testimony of Mark L. Woodbury.)

Q. Will you state in your own words the substance of what the decedent said concerning the lapse of his policy?

A. Yes. He was very angered because the Government claimed his insurance had lapsed and it had not lapsed, and that was his opinion. He didn't understand what they were driving at, and so that was the cause of a good deal of consternation on his part.

Q. Let me clarify this so we will know exactly what you mean. Will you repeat the gist of his words?

A. Well, yes. The Government claimed his insurance had lapsed, and it had not lapsed—he did not believe it had lapsed. In other words, apparently they had gone back to some previous time, referred back to something that was out of his mind, that he had forgotten about. The thing that I remember most specifically is of Bill being angered because they had fouled it up.

Q. Due to the technical rules of evidence—I want to ask you this: Is this opinion which you have just stated your own conclusion, or is that the gist of what the deceased said?

A. It is the gist of what the deceased said.

Mr. Cole: You may examine.

Mr. Brooke: I didn't hear the last question and answer.

(Last question and answer read.) [44]



(Testimony of Mark L. Woodbury.)

Cross-Examination

By Mr. Brooke:

Q. You previously testified Mr. Bill McIndoe intended to reinstate his policy. Is that so?

A. Well, I didn't recall very clearly this morning the exact situation. If I could explain it——

The Court: He did not change his testimony.

Mr. Brooke: That is all.

(Witness excused.)

Mr. Cole: Now, if your Honor please, the plaintiff has no more witnesses to call. However, it is the plaintiff's contention, based upon Exhibit C and based particularly upon Paragraph 4 of Exhibit C, that the Veterans Administration could have and should have made an administrative adjustment of this policy to the extent of three instead of two missing premiums. The gist of the correspondence which the plaintiff received from the Veterans Administration is to the effect that the Government had waived two missing premiums, and those two are set forth in the pre-trial order on Page 2, in Paragraph 4.

However, a careful reading of this Exhibit C indicates that the Veterans Administration was authorized to waive three. I feel, your Honor, a reading of this administrative bulletin will stand for itself, and that a waiver should have taken place for this ~~A~~ additional month. [45]

The Court: Was the waiver of premiums a mat-

ter of discretion with the Veterans Administration?

Mr. Cole: I could not answer that, except as far as it appears in this bulletin——

The Court: You said they were authorized to. Does that require the waiving of three premiums in this case, or that they had the authority to do so?

Mr. Cole: I would say, your Honor, that they had the authority to do it and that under these regulations they were required to do it.

The Court: Are you offering the regulations in evidence?

Mr. Cole: Yes, if I may, your Honor.

The Court: Mr. Brooke——

Mr. Brooke: Yes, your Honor.

The Court: ——I saw you getting up. Do you want to interpose an objection to the admissibility of Plaintiff's Exhibit C?

Mr. Brooke: If I am correct, the plaintiff is attempting to set up an estoppel, and I do not believe that this can be done on the ground of estoppel. In any event, the interpretation placed upon the bulletin is certainly——

The Court: I am not concerned with what interpretations are placed upon the bulletin. The question is: Do you object to the admission of Plaintiff's Exhibit C and, if so, on what ground?

Mr. Brooke: I object to it, your Honor, on the ground that there has been no foundation laid for the admission of that document. [46]

The Court: There is no question in your mind, is there, that this is a true copy of a bulletin put out by the Veterans Administration?

Mr. Brooke: No, your Honor.

The Court: The only ground I can see, Mr. Brooke, is its materiality. In view of my previous rulings, I am going to overrule your objection and admit it. Exhibit C is admitted, as well as A and B.

(Copy of letter, William C. McIndoe, Jr., to Veterans Bureau, in re payment of premium due for April on National Service Life Insurance policy, was thereupon received in evidence and marked Plaintiff's Exhibit A.)

(Copy of letter dated May 29, 1947, Veterans Administration, District Office No. 12, to Mr. William C. McIndoe, Jr., Portland, Oregon, was thereupon received in evidence and marked Plaintiff's Exhibit B.)

(Veterans Administration Technical Bulletin TB9-53, September 25, 1947, was thereupon received in evidence and marked Plaintiff's Exhibit C.)

Mr. Cole: The plaintiff rests, your Honor.

(Plaintiff rests.) [47]

#### GEORGE W. CHANEY

was thereupon produced as a witness on behalf of the Defendant and, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Brooke:

Q. Mr. Chaney, by whom are you employed?

(Testimony of George W. Chaney.)

A. The Veterans Administration in Portland.

Q. In what capacity?

A. As Insurance Officer for the State of Oregon for the Veterans Administration.

Q. How long have you held that position?

A. It will be five years the 20th of next January, the 24th of next January.

Q. In the course of your duties have you had opportunity to administer this technical bulletin that has been admitted in evidence as Exhibit C?

A. Yes—not to administer, but to train personnel of the VA as to the provisions of the bulletin.

Q. Could you explain how that technical bulletin operates and functions, briefly?

A. There are two main points to the bulletin. One is if the policy had premiums paid on it for July and August of 1947 and thereafter they were paid when due, they forget any previous omissions. For example, if a man had skipped February, 1947, [48] but paid for July and August, then the policy was in force as of September 1st. That is one main section of the bulletin.

The other main section states that if a man had made three consecutive monthly payments he was in force with the third one despite missing a month or so prior thereto, and that was limited, as I recall, through July of 1947. That method of adjustment could not be used by him afterwards.

Q. After July, 1947?

A. That is as I recall the bulletin.

Q. Is there anything in that technical order, or

(Testimony of George W. Chaney.)

bulletin, similar to the interpretation placed on the order by Mr. Cole to the effect that the Veterans Administration, as a matter of right, was required to permit three failures to pay the insurance premium and still keep the policy in force?

A. I do not recall from memory whether there was any limit stated as to the number of times it could have occurred, but it very clearly states three consecutive months must be paid, without any missing months, before it will be administratively considered in force.

Q. Are you familiar with the rates on a 30-Pay-Life policy in comparison with the rates on a term policy, National Service Life?

A. The premiums on a 30-Pay will usually be approximately two or two and a half times as expensive as term insurance.

Q. What if a person chose to take advantage of a cheaper premium rate, is there an interest rate, an interest payment which must [49] be incorporated with this?

A. To convert retroactively to a prior date, you pay the reserve on a converted policy that you are changing to, and that reserve is an increment for future claims, plus the interest.

Q. Are you familiar, in this particular case, with the date of the death of the insured?

A. Yes.

Q. Are you also familiar with the date when he first took out his policy?



(Testimony of George W. Chaney.)

A. From what has been said. I do not recall it from my other observation of the case.

Mr. Brooke: If the Court please, this is something that has not been agreed upon in the pre-trial order. Would it be permissible to give that information to the witness? He is testifying as an expert witness as to this particular question, your Honor.

The Court: As to how much he would have had to pay?

Mr. Brooke: If he had converted the policy back to the time he took it out originally.

The Court: What is the purpose?

Mr. Brooke: Just to demonstrate the financial condition of the insured and the amount of money which would have been required to do so, and how it would appear it would be almost impossible, taking the circumstances into account.

The Court: For the purpose of [50] impeachment?

Mr. Brooke: For the purpose of establishing the intention of the deceased, as previously testified to, and actually for the purposes of impeachment, too, I suppose.

The Court: What difference does it make whether he was going to convert or not?

Mr. Brooke: The testimony was to the effect that he had plans to convert, your Honor.

The Court: Go ahead.

Q. (By Mr. Brooke): In the agreed facts it is stated that this policy was in effect September 28, 1943; also, it is an agreed fact that William C. Mc-



(Testimony of George W. Chaney.)

Indoe, Jr., died in August—August 24, 1947.

Can you state approximately what the cost would be to convert that policy to a 30-Pay-Life back to the time it first became effective, if that was done approximately the time William C. McIndoe, Jr., died?

A. It would be over \$400, something closer to probably \$450.

Mr. Brooke: I believe that is all.

The Court: Is this the man who processed this claim?

Q. (By Mr. Brooke): I believe you did have something to do with it?

A. I had no determination of the claim. I assisted the claimant in filing an appeal to the Administrator, just giving the information necessary, whatever assistance I could in his attempt to have it appealed to the Administrator. [51]

The Court: What is Exhibit A? Where is the file of the Government?

Mr. Brooke: It is in my room, your Honor.

The Court: Why hasn't the file been made available?

Mr. Brooke: It has been available.

Mr. Cole: I understood the file was to be here, if there were any questions that were to be asked. That is the reason I did not have it subpoenaed. We agreed, your Honor, we would have these copies prepared, and so forth, so the originals would not have to be removed from the Veterans Administration file.

(Testimony of George W. Chaney.)

Mr. Brooke: We discussed that, your Honor, because of the fact that the originals would be removed from the file and would have to be in evidence for a certain period of time and, therefore, we stipulated on the authenticity of the copies of the originals.

The Court: Have you seen the Government's file?

Mr. Cole: No, your Honor, I have not. I requested permission to see the file, or my client did, after the refusal of the Board of Veterans Appeals to grant payment of this policy, or on this policy, and then we had what we thought was sufficient information that we obtained from other sources. However, I understood from Counsel that the file was to be available here, together with this witness, so if there was anything your Honor wanted to inquire about it would be available from the original file itself. [52]

Mr. Brooke: I was not aware of that. I did not think the file could be indiscriminately disclosed to the plaintiff's attorney. If he wanted certain papers he could serve notice upon us to produce them. The questions that I have put to the witness have not had anything to do with the file, as far as that goes anyway.

Mr. Cole: I am sorry, your Honor, but I understood Counsel to state, when we were discussing this case, in drawing the pre-trial order, that the file would be available. I, myself, have no reason to see the file because I believe we have made out our case.

(Testimony of George W. Chaney.)

but I wanted it here for the Court's benefit and I understood it was to be here. If I had understood to the contrary, I would have subpoenaed the entire file into court, under the procedure provided.

Mr. Brooke: If you wanted it in connection with your affirmative case, you should have made some kind of a statement to that effect. Your case is closed.

Mr. Cole: I admit that, and we have had these copies made of these documents. I thought that would be for the convenience of all concerned so that the originals would not have to be removed from the Veterans Administration file.

The Court: Did the Government get any communications from the decedent while the decedent was in Wyoming?

Mr. Brooke: I am not certain. I talked to the witness with a view to finding the pertinent letters in this particular file, [53] and we found those that we thought were pertinent to the case. It is a rather big file.

The Court: I do not think where the Government is involved that anything should be kept out. I will order that the file be produced.

Mr. Brooke: Do you wish me to get that at this moment, your Honor?

The Court: You can get the file right now. Do you want to cross-examine this witness? Let him finish his cross-examination and then you can produce the file.

(Testimony of George W. Chaney.)

**Cross-Examination**

By Mr. Cole:

Q. You said, as I recall, in substance, that if premiums were paid for July and August, 1947, all previous amounts were forgiven, is that correct?

A. That is essentially right.

Q. Does the use of the term "all" mean two or three? Does that include two or three, both?

A. It is a very involved technical bulletin, but I do not recall any limitation on the number. I would have to refer to the exhibit.

Q. I will hand you Exhibit C and call your attention to Paragraph 4. Would you read that paragraph, please?

A. "Prior instructions of November 8, 1946, as amended May 9, [54] 1947, authorized adjustment of insurance by establishment of a lien for the missing months in cases in which there were not more than three missing premiums and provided premiums were timely paid for at least three consecutive months through the current month; the current month then being November, 1946, but the rule is applicable to any such case in which the third premium in a series of three or more consecutive premiums was timely tendered for November, 1946, or for any subsequent months through July, 1947."

Do you want the rest of it?

Q. No. Having read this technical bulletin, that provision of it, would you say if premiums had been

(Testimony of George W. Chaney.)

paid for at least three consecutive months, through the current month, the current month would be any month between November, 1946, and July, 1947?

A. I don't know that I follow your question.

The Court: I don't think you have to have his interpretation of what the bulletin says. I think we can understand what the bulletin says.

Mr. Cole: I think that is all.

The Court: Don't you know what the bulletin says?

Mr. Cole: Yes, your Honor.

The Court: Is the language ambiguous?

Mr. Cole: Well, yes, it is somewhat.

The Court: Are you of the opinion that it waives the payment of premiums subsequent to the third consecutive payment or [55] the three consecutive payments made?

Mr. Cole: No. I am of the opinion that it waives the premium for the current month—that it waives the premium if the current month is timely paid. What I am trying to find out is whether the current month may be November, 1946, and any subsequent month between November, 1946, and July, 1947.

The Court: Are you just testing this witness' knowledge, or are you referring to a specific case and, if so, is the case you are referring to the case involved in the case at bar?

Mr. Cole: Yes, your Honor. That is correct. The case involved is the case at bar. This is the one I am referring to.



(Testimony of George W. Chaney.)

The Court: On Page 2 of the pre-trial order you have a series of payments made and the corresponding dates of payment. If you want to show this to the witness and ask him whether or not the decedent was entitled to another month's waive, I will permit you to do so.

(Exhibit C handed to the witness, together with the pre-trial order.)

The Court: Ask your question.

Q. (By Mr. Cole): You have been handed the pre-trial order in this case and your attention has been called to Paragraph 2 or, rather, Page 2 thereof, Paragraph 4, in which is listed a schedule of premium due dates and a schedule of dates of payment.

Under the Veterans Administration Technical Bulletin, which is Exhibit C in this case, are you authorized to waive more [56] than two monthly premiums, or would the Veterans Administration be authorized to waive and required to waive more than the two premiums that are shown therein as waived?

A. No. The two that were waived were waived under this TB9-53. The two shown on the list as waived were waived under authority of this TB9-53.

The Court: I think what Counsel is referring to is: Could they have waived the payment of premium due on June 28, 1947? Isn't that the point?

Mr. Cole: That is correct.

A. No, sir, because it waives only for prior



(Testimony of George W. Chauey.)

period, and then if three consecutive months through July, 1947, were submitted under this directive I don't see how we would be authorized to waive any future premium that was not covered by this requirement that three consecutive premiums be paid through July, 1947, or prior thereto.

Q. Calling your attention to the date of payment schedule, I point out that three consecutive payments were made and they are designated April 11, 1947; April 11, 1947, and May 1, 1947. Doesn't that satisfy the requirements for three consecutive payments?

A. Yes, for everything prior thereto that might have been missed.

Q. Calling your attention to the date of payment schedule, and pointing out that the next to the last premium due, listed there, was April 28, 1947, actually paid on April 11, 1947, and credited, [57] according to the schedule here, to the previous payment due March 28, 1947, would it have been possible under existing regulations for the Veterans Administration to credit the veteran on the payment that he made on April 11th for April and May and waive in addition the March 28th payment?

A. No, sir, not under the directive, because that premium was submitted within the grace period of the March, 1947, premium due date, and we have to submit any premium that is submitted within the grace period.

Q. Well, that is true as to the premium——

(Testimony of George W. Chaney.)

The Court: Mr. Cole, even assuming you are correct and would be entitled to one other month, how would that affect the plaintiff's right to recover in this case? The last premium credited to the deceased was May 28, 1947. Assuming that another payment was to be credited, that would be June 28, 1947, and add 31 days beyond that and you are still paid to August 1st, and the decedent died on August 24th. I don't understand that, but go ahead.

Mr. Cole: Let me explain this, if I may, your Honor. I believe that this witness can tell us these premiums are payable in advance.

A. They are due on the due date or within 31 days thereafter.

Q. Calling your attention again to the last premium due date listed on Page 2 of the pre-trial order, May 28, 1947, wouldn't that payment carry the policy in force until the 28th day of June,[58] 1947?

The Court: The 29th.

A. Carry it until the 29th day.

Mr. Cole: Yes; and, so, this policy was actually paid until June 29, 1947?

A. Through June 29, 1947.

Q. And one additional premium payment, if it had been made, of \$6.50 would have carried this policy through July 28th?

A. Either the 28th or 29th of July if another payment had been made.

Q. Then, by the terms of the policy, it is in effect for 31 days even after the last premium has been paid; there is a 31-day grace period within

(Testimony of George W. Chaney.)

which, if death occurs, the policy became payable?

A. That is correct.

Q. So, even if no payment had been made after the payment up to July 28th or 29th, this policy would have been in effect to and including August 28 and 29th? A. No, sir.

Q. I mean, as far as payment by the Veterans Administration is concerned?

A. If one more payment had been made, it would have covered in case of death up to July 28th or 29th. It would have been due June 28th and the next premium would have been due July 28th.

The Court: I think, Mr. Cole, you are a little mistaken on [59] your figures because if a premium is due on June 28th the policy is in force until July 29th. The insured does not get 31 days from July 29th within which to make that premium payment. The policy lapses on the 30th of July. That is the way all insurance is written.

Mr. Cole: Yes, your Honor, I understand the policy lapses, but it is my understanding if the deceased died within 31 days of the date of lapse—

The Court: Within 31 days of the date of the last premium payment, the last premium when due. If a premium were paid on June 28th, and if he had made an additional payment on June 28th, then that policy would have been in force and the plaintiff could recover if the decedent died any time up to or through July 29th, not August 29th or August 30th. I don't think there is any use taking up additional time on that.

(Testimony of George W. Chaney.)

Mr. Cole: This is a very serious thing, your Honor, and it is my fault if it is because I have alleged one payment on the ground that I understood if this one payment had been made that would have carried it to July 28th, and the death would have been within the 31 days. I do not think it affects the fundamental theory of the case.

The Court: I think you had better direct your attention to the particular inquiry contained in Exhibit B and see what that means.

Q. (By Mr. Cole): Will you look at Plaintiff's Exhibit B which is [60] attached to the pre-trial order?

The Court: I think the witness has the original of it, but, in any event, you can straighten it out.

Mr. Cole: Will you read the second paragraph of Exhibit B, please?

A. "The records indicate that premiums on your insurance have been paid as shown in Column (3) below. If no remittance was tendered for the premium due on July 28, 1946, or within 31 days thereafter, the insurance lapsed."

Mr. Brooke: Isn't this beyond the scope of the direct examination?

The Court: He will be the Court's witness. I would like to find out about this.

Mr. Brooke: Very well, your Honor.

Q. (By Mr. Cole): If a premium had been paid in this case to include July 28, 1947, as you say, through July 28, 1947, and the insured had died

(Testimony of George W. Chaney.)

within 31 days after July 28, 1947, would the policy have become payable?

A. That is right; if the premium for July 28th had been paid and then the policy holder had died within 31 days thereafter, it would have been payable.

I want to restate that. If he paid his July 28, 1947, premium, the next premium would be due August 28, 1947, and he would have 31 days thereafter. The payment paid for July 28th, 1947, pays to the next due date, or August 28, 1947, and if he dies [61] within the 31 days we subtract the premium for August from the face amount of the insurance. Is that the question you asked?

Mr. Cole: Yes.

A. I didn't understand it before. I am sorry.

Q. Just let me summarize it this way: If the insured makes the monthly premium payments and dies within 31 days after that monthly premium payment——

A. Excuse me.

Q. ——and dies within 61 days after that monthly premium payment, is the policy payable less the premium for the last month?

A. That is correct.

The Court: I don't understand that myself. Take a look at the second paragraph again. It says under (3), "Premium paid through 7/27/1946." Is that correct? This letter is dated in 1947.

A. The question he asked me did not jibe with the dates here.



(Testimony of George W. Chaney.)

The Court: Let's get down to Exhibit B and see what this letter says. Is that date incorrect?

Mr. Cole: No, your Honor, the date is correct. That is the date the letter was written and mailed.

The Court: How about Paragraph 2, under (3), "Premiums paid through 7/27/1946." Is that correct?

Mr. Cole: Your Honor, it is not correct. Let me say this——

Mr. Brooke: It is correct, your Honor, and that is the way the letter was received by the insured. [62]

The Court: Is this a copy of the original letter?

Mr. Brooke: This is an exact copy of the original.

The Court: Is it your contention "1946" should have read "1947"?

Mr. Cole: No, your Honor.

The Court: Now we have got that straight. What do you contend for this letter? We want to find out about it.

Mr. Cole: As to this letter, your Honor, if your Honor will permit me to summarize it, there are two things: It says, first, that, in effect, "If your premium was not paid on July 28th or within 30 days, 31 days, the insurance lapsed." That is the first important thing it says. Then it says that there is enclosed an application for reinstatement. The second important thing it says is that there is a credit of \$25.90. In brief, that is what that letter says.

The letter itself did not answer the request that



(Testimony of George W. Chaney.)

the deceased made to the Veterans Administration, which is Exhibit A. The request was for the status of his policy and the reply, instead of saying "This is the status of your policy" answered it in a kind of a backhanded manner. It just told him two things. It said, "If your policy was not paid approximately ten months ago, then it is out, but we also have a credit which can be applied to your premium payments."

The decedent, your Honor, when he received this letter, knew that the premium for July 28, 1946, had been paid and paid [63] on time. He knew that. He had a cancelled check to show it, and the pre-trial order admits the dates of those payments. He knew the policy had not lapsed, and that was, incidentally, the purport of the testimony of this witness, that he knew his insurance had not lapsed. The second part of the letter tells about a credit, and permitting him to use that credit to apply on later premium payments.

Then, when this matter comes up by the presentation of a claim, the Government denies this Exhibit B and says Exhibit B is all wrong. We have the Veterans Administration saying, "We made a mistake in this letter of May 29, 1947, and you had no credit," and it is a pure case of estoppel that we are urging against the Government. The Government is estopped to deny that it has not received these premium payments because it has told the veteran, "You have got a credit and you can apply that credit." That is the whole case.

(Testimony of George W. Chaney.)

The Court: Is there any question about the statement of Mr. Cole as to what this letter says? There was no adjustment of this policy?

Mr. Brooke: No, there was not. It says here, in effect, if the Court please, that our record shows that payments have been made through July 27, 1946, and then it adds a condition here that if no remittance was tendered until after July 28th, or 31 days thereafter, the insurance lapsed. As Mr. Cole stated, payments were made into the Veterans Administration, and that is [64] even admitted in the pre-trial order. The policy lapsed, your Honor, and he did not have anything to pay on; he must have had some money in there that belonged to him to account for the credit.

But they come in and say that he knew it had not lapsed. We are not so sure of that after the testimony before the Court this morning; but if he knew it had not lapsed, he had cancelled checks; he knew the payments should be made. How could he possibly have had a credit? A credit presupposes the policy has lapsed, and I think that is the only fair interpretation of the letter.

I think that is further established by the letter that was written by the insured himself.

The Court: When?

Mr. Brooke: A letter right prior to this time, and which this letter is in answer to.

The Court: It seems to me if the insured wrote an additional letter to the Veterans Administration—

(Testimony of George W. Chaney.)

Mr. Cole: I think the Court should see those.

The Court: Yes.

Mr. Cole: I will proceed to get those.

The Court: We will take a short recess.

(Recess.)

Mr. Brooke: As I read this letter, it states that the records show that the insured had paid his premium up to and [65] including July 26, 1946. Then it states if no remittance was tendered for the premium due on the next date, or within 31 days thereafter, the insurance lapsed. If that situation is so, there is a credit. I do not see that the Veterans Administration was mistaken or in error there. They are not in error at all. They are making a statement that informs us that there is a credit.

The Court: As long as Mr. Chaney is here, I want him to tell us what this letter means. You have seen this letter time and again?

A. I have.

The Court: I will hand it back to you, and ask you to tell me and the people here under what circumstances would a credit of \$25.90 accrue to the insured?

A. Only if a lapse had occurred, because that credit could have come in this case only from premiums. Any premiums submitted after a lapse, we would have to hold and refund unless the man told us how to apply them on a reinstatement.

The Court: I still don't understand what you are saying.

(Testimony of George W. Chaney.)

The Witness: May I state that a little differently, sir?

The Court: Yes, go ahead.

The Witness: If I owe a premium for December and I don't pay it within 31 days after the 1st of December, my policy will lapse as of the 1st of December, so if I send the premium in, we will say, in February, that money will be returned to me unless I tell them to apply it on a reinstatement and send in the required [66] form.

The Court: In other words, what this letter says is that if you did not pay your premium July 28, 1946, or within 31 days thereafter, or 30 days thereafter, the insurance lapses, and in the event that it did lapse then you would be entitled to \$25.90, the amount paid by you to the Veterans Administration on account of this insurance, subsequent to that time?

The Witness: Subsequent to the lapse.

The Court: \$25.90 is the amount?

The Witness: Yes.

The Court: Does that add up correctly?

Mr. Brooke: I do not believe that total is correct, your Honor, but that is the information that is available to the San Francisco office.

Mr. Cole: May I ask a question to clear this up?

The Court: Go ahead.

Q. (By Mr. Cole): You have been charged with the administration of this case in the Portland office, have you not?

A. My responsibility in this case has been to try

(Testimony of George W. Chaney.)

to furnish any and all information and to help the claimant any way I can. I make no decision of these cases.

Q. You have, however, followed the progress of the case and know what the decisions have been, generally? A. Yes.

Q. Is it not a fact that the credit in Exhibit B was subsequently [67] repudiated by the Veterans Administration?

A. That is correct, because subsequently their records were reviewed and they found it actually had not lapsed in July, 1946, and, therefore, no credit was available. The credit had to be applied on subsequent months, when it was found no lapse occurred back in that year.

Q. Did this change of position by the Veterans Administration occur, to your knowledge, prior to or after the decedent's death in August, 1947?

A. I don't recall when their records were completed to the extent of knowing what is known now.

Q. From your own knowledge, do you know that the payment of the policy, which is the subject of this lawsuit, was denied on the ground that one premium only was missing?

A. They did not state it that way, but if one more had been made we would have paid the claim under the grace period.

Q. Would you briefly state how that would have operated? In other words, how would that have operated from the schedule on Page 2, Paragraph 4? Will you follow that schedule out, making the



(Testimony of George W. Chaney.)

assumption that one additional premium had been paid, and explain how the coverage would have included the date of death or August 24, 1947?

A. The payment that was submitted May 1, 1947, paid the premium due May 28, 1947, and that premium due May 28, 1947, paid through June 27, 1947, with the next premium due June 28, 1947. If [68] a premium had been paid to cover June 28, 1947, it would have paid through July 27, 1947, the next premium due July 28th.

Q. Then, going on from there, July 27, 1947, on the assumption that one additional premium had been paid, will you continue on from July 28, 1947, to show how the policy would have been payable?

A. If it had been paid, the next premium would have been due July 28th, or within 31 days thereafter. Death within the grace period would have caused us to be liable, less one monthly premium.

The Court: Less one monthly premium?

A. That is, subtracting one from the settlement.

The Court: On May 1, 1947, he made the payment for the premium due May 28, 1947? That is correct?

A. Yes.

The Court: Therefore, that premium took him up to June 28, 1947. Would the assured have until July 29, 1947, within which to make such payment or, in other words, would he have coverage until July 29, 1947, under the payment that he did make?

A. Yes.

The Court: What payment did he make?



(Testimony of George W. Chaney.)

Mr. Brooke: May.

The Court: That became due on May 28th. Then, for instance, if the assured had died prior to July 29, 1947, he would have [69] been covered under the payment that was actually made? Then I was in error. In other words, he had two months, 61 days.

The Witness: It is confusing. It was to me. I got stuck a minute ago, the fact it is due the 28th. Most policies, you think of them as due the 1st; the premium for the month of June covers the month of June from the 1st to the end of June, so if I die after the 1st of June I am covered in case of death up until the end of 31 days after the 1st of June. The payment I made for May 1st would have paid me up to June. Another premium would not be due until June 1st and I would be covered for 31 days thereafter. The premium covers 30 days and the grace period covers 31 days. The premium that was due on May 28th was for a period of one month, from May 28th to June 28th, but the due date is in advance for the month it covers, so we will give 31 days leeway for the man to make that payment.

The Court: And the 31 days does not begin to run on May 28th; it begins to run on June 28th?

The Witness: Yes, because May 28th pays through June 27th.

The Court: I have learned something right now.

Mr. Cole: I have been working with this case

(Testimony of George W. Chaney.)

for two or three years and I learn something every day.

The Court: As you construe the letter written by Mr. D. O. Nelson, Director, Insurance Service of the Veterans Administration, the \$25.90 was a credit only in the event the policy had lapsed for failure to make the premium payment on July 28, 1946, or within 31 days thereafter? [70]

A. Yes, sir.

Mr. Brooke: I might point out to your Honor that enclosed with that letter, as stated, was an application for reinstatement, which has been marked, for purposes of identification, as Government's Exhibit D.

The Court: Exhibit D is now being offered?

Mr. Brooke: Yes.

The Court: Is there any objection?

Mr. Cole: The one I have got has no printing of any kind on it.

Mr. Brooke: I think it was a blank form. Perhaps Mr. Chaney can clarify the document for us.

Q. Have you had occasion to see these documents before, Mr. Chaney?

The Court: Just one second on this. Is this the identical form that is used?

Mr. Brooke: I do not believe that is the identical document. I talked to Mr. Chaney and he tells me that is the form that was brought into effect in 1949, but it is substantially the same, with minor alterations. Mr. Chaney can clarify that.

The Court: Go ahead.

(Testimony of George W. Chaney.)

The Witness: It is a revision. They frequently revise these forms, sometimes to clarify them and at other times because of amendments to the law by Congress. I did not have anything to do with revising it, but I would say it was revised from the form that was previously used, or the same form number, but adding [71] Section 7. That provision was not authorized until the amendment in 1946 by Congress. That authorized the TD provision, so when they finally got around to revising the form, they included that blocking. We have so many of these different forms.

The Court: This supersedes Form 9-353a, printed in May, 1947. The date of this letter is in 1947. Can't the Government produce a copy of the application form in effect at that time?

Mr. Brooke: I tried to get Mr. Chaney before he left the office, and he had already left to come to Court. There may be one in the files, too.

The Court: Just one second.

Mr. Cole: The plaintiff tells me he thinks he has that in his briefcase, your Honor, if he may be excused to look through the briefcase.

The Court: Certainly.

Mr. Brooke: Here it is, your Honor.

The Court: Have it marked.

(Form for application for reinstatement was thereupon marked Defendant's Identification No. D-1.)

The Court: Do you want it handed to the wit-

(Testimony of George W. Chaney.)

ness?

Mr. Brooke: Yes, your Honor.

Q. The Bailiff has handed you a document marked D-1 for Identification. Will you examine that document?

The Court: Ask that again. [72]

Q. (By Mr. Brooke): Have you seen that document before, or a similar document to that one?

A. Yes.

Q. Just what is that?

A. It is a comparative health statement application for reinstatement.

Q. What is its form number? A. 9-37.

Q. Does it show at the lower left-hand corner when that document was issued or printed?

A. January, 1947.

Mr. Brooke: At this time, your Honor, I am offering that document in evidence as part of the enclosure that came with Exhibit B.

Mr. Cole: No objection, your Honor.

The Court: It may be admitted.

(Application for reinstatement was thereupon received in evidence and marked Defendant's Exhibit D-1.)

The Court: Are there any other questions, Mr. Brooke?

Mr. Brooke: I have no further questions.

The Court: Mr. Cole, are you finished with your cross-examination?

Mr. Cole: Yes, your Honor, I am.

(Witness excused.) [73]

The Court: Does that complete the Government's case?

Mr. Brooke: There is one point that has been raised by counsel for the plaintiff and that is the fact the insured had cancelled checks to show he had made these payments. I think they also should be produced.

The Court: The Government admits that he made those payments. Why should the cancelled checks be introduced to prove something that the Government admits?

Mr. Brooke: I don't think I want it in for that purpose. Estoppel depends on the basis that the plaintiff did not have any knowledge of his own that these payments—wait a minute. Plaintiff knew that this policy had not lapsed because he has cancelled checks to show how many payments he had made. How can he rely on a credit when none of these cancelled checks——

The Court: That is a matter of argument.

Mr. Brooke: I think they are properly admissible in evidence.

The Court: Mr. Brooke, you have been in this Court a number of times and you know before you can bring in any such evidence you have to identify it in the pre-trial order. You knew about these checks before.

Mr. Brooke: In talking to Mr. Cole it was my impression that he was going to have those in evidence.

The Court: You helped prepare the pre-trial order.



Mr. Brooke: That is correct, your Honor.

The Court: And as an incident to this trial I asked you if that is all you wanted and you said it was. [74]

Mr. Brooke: I expected those to be in the case. I made a mistake, your Honor.

Mr. Cole: Your Honor, the plaintiff certainly has no intention of concealing anything from the Government or the Government's attorneys. I appreciate that this case involves a rather complex question. It was my intention to reduce this case to the utmost simplicity, as far as possible, and that was done, I think, in the pre-trial order by admitting as many things as possible.

The Court: Do you want to join with Mr. Brooke in offering these checks?

Mr. Cole: No, I am not offering the checks. I am just explaining——

The Court: Let me see the checks.

Mr. Cole: Here are the checks and here are the receipts.

The Court: Mr. Brooke, I can't see how these checks can prove anything that is not already admitted in the pre-trial order.

Mr. Brooke: My point is that if the deceased had canceled checks in his possession he could check up and find out if his policy was to his credit or whether he actually owed money on his policy. That is the reason I thought that these might be pertinent in this case.

The Court: Let the record show that he made the payments by check, the payments listed on Page



2 of the pre-trial order, [75] and that he received receipts therefor. Is there any objection to that?

Mr. Cole: No objection.

The Court: The case, then, is closed except for the production of the file of the Government in connection with the claim of William C. McIndoe, Jr., and it is understood that plaintiff's counsel will have opportunity to examine all communications between the insured and the Government and all letters written on behalf of the insured to the Government and, likewise, all responses thereto; office memoranda, briefs, and other matters in the file will not be available to the plaintiff.

Mr. Brooke: Am I correct in understanding you are making particular reference to documents written subsequent to the letter that has been marked Exhibit A and the letter that has been marked Exhibit B in this case?

The Court: Yes. I am particularly interested in any communication that was sent by the insured to the Veterans Administration after the exhibits attached to the pre-trial order, because they may tend to explain and show whether or not he was actually misled by this letter, which is Exhibit B.

Mr. Brooke, will you furnish this file to the Court and, after I have looked at it, will you communicate with Mr. Cole?

Mr. Brooke: Yes.

The Court: After you have examined that file, then, if you want to argue the matter, it will be set down for argument. It [76] may very well be that we will want Mr. Chaney back here.

Mr. Brooke: Yes.

The Court: All other witnesses are excused permanently.

Mr. Cole: Yes.

Thereafter, on February 17, 1951, the Court rendered the following oral opinion:

William C. McIndoe, plaintiff, as beneficiary of a National Service Life Insurance policy issued on the life of his son, William C. McIndoe, Jr., filed this action to recover benefits provided for under such policy. The defendants, the United States of America, refused payment on the ground that the premiums had not been paid to the date of the death of the insured. The plaintiff contends that the defendant is estopped to assert such lack of payment by reason of the fact that the Director of Insurance Service of the Regional Office of the Veterans Administration, on May 29, 1947, sent to the insured a misleading letter in response to a letter from the insured in which he enclosed \$6.50, the premium for one month, and in which he requested information as to "just where I stand." The Director's letter, plaintiff claims, led the insured to believe that he had credit of \$25.90 which amount, lacking 10 cents, was sufficient to pay four monthly premiums.

It is unnecessary to pass upon the question of whether the letter, together with the other evidence in the [77] case, contains all the elements of an estoppel for the reason that I have come to the conclusion that the United States may not be estopped to assert any defense available to it on a policy of National Service Life Insurance because

of any action of an employee of the Veterans Administration.

Plaintiff in his opening brief referred to the case of *Loveland vs. the United States*, 18 F. 2d 585. In that case the trial court held that the doctrine of estoppel may be invoked against the Government.

Defendant, in its answering brief, pointed out that the case was appealed and that the Court of Appeals decision, reported in 25 F. 2d 447, reversed the trial court and held that the Government was not liable on the certificate of insurance.

Plaintiff, in his reply brief, stated:

“It would appear that of all the cases cited in the briefs of both of the parties, that of *Loveland vs. United States*, 18 F. 2d 585, is most nearly in point, as that is the only case which deals with the question of estoppel against the Government from asserting the nonpayment of premiums as a defense on an action for payment of a life insurance policy. The defendant’s brief correctly points out that that case was reversed by the Circuit Court of Appeals, 25 F. 2d 447, but defendant has failed to add to his brief that, on appeal to the United States Supreme Court, the [78] decision of the Circuit Court of Appeals was reversed on a confession of error, 278 U. S. 665, 73 L.Ed. 571, 49 S. Ct. 184, and that the conclusion of the case was, therefore, the one which was reached by the District Court in holding that an estoppel was proper.”

In the case of *Coleman vs. the United States*, 18 F. Supp. 71 and 73, the Court, in discussing this case, stated:

“The *Loveland* case, last cited *supra*, holds that the Government cannot be estopped by a wrongful act of one of its employees which may have induced the insured to stop paying his premium. Plaintiff’s counsel challenges this case as authority because, on certiorari (*In re Loveland’s Estate*, 278 U. S. 665, 49 S. Ct. 184, 73 L. Ed. 571) the Court of Appeals for the Third Circuit was reversed and the judgment of the District Court (*Loveland v. U. S.*, 18 F. 2d 585) affirmed. This result followed, however, from confession of error by the Solicitor General on a ground wholly distinct from the question of estoppel, to wit: ‘This confession of error is made on the ground that no written stipulation signed by the parties waiving a jury was made or filed in the District Court, as provided in section 649 and section 700, Revised Statutes of the United States (28 U.S.C.A. [79] §773, 875) and that in the absence of such a stipulation the sufficiency of the findings of the court to support the judgment may not be examined on appeal.’

“The reasoning of the Court of Appeals in the *Loveland* case, therefore, has not been rejected by our highest court, and commends itself as logical and sound doctrine. The court held that: The United States, by entering the life insurance field through enactment of

the War Risk Insurance Acts, did not subject itself to estoppel by acts or omissions of its officers or agents in carrying out the acts, and to which they would have no power to subject it in any other sphere of Government activity."

On the authority of the Loveland case and in view of the subsequent decisions which support the doctrine therein enunciated, I find that the United States is not estopped to raise the defense of non-payment of premium on a National Service Life Insurance policy and that a judgment in its favor should be entered. [80]

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[Title of District Court and Cause.]

#### CLERK'S CERTIFICATE

I, Ira G. Holcomb, an Official Reporter of the above-entitled Court, do hereby certify that on November 10, 1950, I reported in shorthand the proceedings had in the above-entitled matter, that I thereafter caused my said shorthand notes to be reduced to typewriting under my direction, and that the foregoing transcript, consisting of Pages numbered 1 to 77, both inclusive, constitutes a full, true and accurate transcript of said proceedings so taken by me in shorthand on said date, as aforesaid, and of the whole thereof.

I further certify that a true and accurate copy of



the oral opinion of the Court in the above matter, rendered on February 17, 1951, appears on Pages numbered 77 to 80, both inclusive.

Dated this 29th day of March, 1951.

/s/ IRA G. HOLCOMB,  
Official Reporter.

[Endorsed]: Filed May 7, 1951.

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CERTIFICATE OF CLERK

United States of America,  
District of Oregon—ss.

I, Lowell Mundorff, Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing documents consisting of pre-trial order, findings of fact and conclusions of law, judgment, notice of appeal, designation of record on appeal, and transcript of docket entries, constitute the record on appeal from a judgment of said court in a cause therein numbered Civil 5698, in which William C. McIndoe is plaintiff and appellant, and the United States of America is defendant and appellee; that the said record has been prepared by me in accordance with the designation of contents of record on appeal filed by the appellant, and in accordance with the rules of this court.

I further certify that there is enclosed herewith



duplicate transcript of testimony dated November 10, 1950, filed in this office in this cause.

I further certify that the cost of filing the notice of appeal, \$5.00, has been paid by the appellant.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 8th day of May, 1951.

[Seal]                      LOWELL MUNDORFF,  
Clerk.

By /s/ F. L. BUCK,  
Chief Deputy.

[Endorsed]: No. 12922. United States Court of Appeals for the Ninth Circuit. William C. McIndoe, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Oregon.

Filed May 10, 1951.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

United States Court of Appeals for the  
Ninth Circuit

No. 12922

Civil No. 5698

WILLIAM C. McINDOE,

Plaintiff and Appellant,

vs.

UNITED STATES OF AMERICA,

Defendant and Appellee.

### STATEMENT OF POINTS

To: United States of America, Defendant and Appellee, and Henry L. Hess, United States Attorney; John R. Brooke, Deputy United States Attorney, District of Oregon, United States Court House, Portland 7, Oregon.

Comes now William C. McIndoe, plaintiff and appellant above named, acting by and through his attorneys of record, and makes the following statement of points on which he intends to rely in said appeal:

1. The District Court erred in deciding that no estoppel would lie against the United States on a policy of National Service Life Insurance.

2. The District Court erred in failing to adjudge that the policy of National Service Life Insurance upon which the action was brought was in full force and effect at the time of the insured's death and in

failing to grant judgment for the plaintiff for the amount of the policy plus interest against the United States.

Dated at Portland, Oregon, this 15th day of May, 1951.

/s/ JAMES COLE,

/s/ BARTLETT F. COLE,

Attorneys for Plaintiff and Appellant William C. McIndoe.

Due service of the within Statement of Points is hereby accepted in Multnomah County, Oregon, this 15th day of May, 1951, by receiving a copy thereof, duly certified to as such by Bartlett F. Cole, of Attorneys for plaintiff and appellant.

By /s/ JOHN R. BROOKE,

Deputy, United States

District Attorney.

[Endorsed]: Filed May 17, 1951.